IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

RSA.No. 402 of 2007()

AS.110/1997 of III ADDL. DISTRICT COURT, TRIVANDRUM
OS.1966/1992 of I ADDL.M.C.,TRIVANDRUM

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: APPELLANT/APPELLANT/PLAINTIFF

SUJATHA, D/O SREEDHARAN, RESIDING AT
KURUP NIVAS, POONTHURA, THIRUVANANTHAPURAM.

BY ADV. SRI.M.R.ANANDAKUTTAN
SMT.M.HEMALATHA
SRI.B.SATHIQ
SRI.R.S.MADHU
SRI.MAHESH ANANDAKUTTAN

RESPONDENTS: RESPONDENTS/DEFENDANTS

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1. OMANA, D/O RAMAN, RESIDING AT
THURAKKARA VEEDU, KALLADYMUGHOM, MANACAUD
JUNCTION, THIRUVANANTHAPURAM.

2. BHARGAVAN, H/O OMANA, RESIDING AT
THURAKKARA VEEDU, KALLADYMUGHOM,
MANACAUD JUNCTION, THIRUVANANTHAPURAM.

3. SARASAMMA, RESIDING AT THURAKKARA VEEDU,
KALLADYMUGHOM, MANACAUD JUNCTION,
THIRUVANANTHAPURAM.

4. REGHU, S/O ALUMKATTIL VASY,
RESIDING AT -DO- -DO-

5. AJITHA, W/O REGHU,
RESIDING AT -DO- -DO-

6. SUSEELA, RESIDING AT THURAKKARA VEEDU,
KALLADYMUGHOM, MANACAUD JUNCTION,
THIRUVANANTHAPURAM.

7. K.VASUMATHY, RESIDING AT CHERUKARA VALLATHOTTATHU, KARUMAM, THIRUVANANTHAPURAM.

8. K.KAMALAMMA, RESIDING AT PLAMOODU VEEDU, VADAKKETHOTTAM, KALLADYMOGHOM MANACAUD, THIRUVANANTHAPURAM.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 402 OF 2007

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Dated this the 4th day of July, 2007

JUDGMENT

Plaintiff in a suit for injunction before Munsiff Court is the appellant. Defendants are the respondents. Appellant sought a decree for injunction contending that plaint schedule property originally belonged to Padmanabhan Narayanan who executed a Will on 24.11.1124 M.E by which Arumugham Bhargavan and Govindan Velappan were appointed as executors and at their instance Ext.A1 partition deed was executed on 23.5.1951 whereunder F schedule property therein was allotted to Sreedharan, son of Padmanabhan Kochappi, brother of Padmanabhan Narayanan and on his death his rights devolved on his wife Kanakam and appellant and appellant is in possession of the property on behalf of all the children of Kanakam and respondents have no right over the same and therefore they are to be restrained by permanent

prohibitory injunction from trespassing into the plaint schedule property. Respondents disputed the claim contending that 13 cents in survey No.1868 belongs to second respondent under Ext.B1 dated 11.12.1975 and second respondent transferred 4.5 cents in favour of the third respondent and 8.5 cents in that survey number was obtained by Bhargavan being the legal heir of 4th respondent and as per sale deed dated 27.3.1978 it was sold to Latha, the daughter of 4th respondent under Ext.B5 sale deed and 10 cents of the remaining property belongs to the sixth respondent as per sale deed 3219/1973 and therefore appellant is not entitled to the decree for injunction sought for. 2. Learned Munsiff on the evidence of PW1, Dws.1 and 2, Ext.A1 and B1 to B7 non-suited appellant holding that appellant did not establish her possession or identity of the property. Appellant challenged the decree and judgment before the District Court,Thiruvananthapuram in A.S.No.110/1997. Before the first appellate court

an application for appoinment of a Commission was filed and a Commissioner was appointed and the Commissioner has submitted a report. Learned Additional District Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

2. Learned counsel appearing for appellant was heard.

3. The argument of learned counsel appearing for appellant was that eventhough first appellate court appointed a Commission, opportunity was not granted to examine the Commissioner and in such circumstance, the decree and judgment passed by the first appellate court are to be set aside and appellant is to be granted permission to adduce further evidence.

4. On hearing learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal. As the suit is only for injunction, the only relevant question is

regarding the possession of the plaint schedule property. Learned Munsiff on the evidence entered a factual finding that appellant did not establish her possession of the plaint schedule property. First appellate court on reappreciation of evidence confirmed that finding. That factual finding cannot be interfered in exercise of the powers of this court under section 100 of the Code of Civil Procedure. Therefore the appeal is only to be dismissed.

5. Learned counsel appearing for appellant then submitted that dismissal of the appeal may not operate as a bar for the appellant to institute a fresh suit on the strength of title. As question of title is not decided, dismissal of the suit will not bar appellant from instituting a suit on the strength of title.

The appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006